Group III: Claims 39-40, drawn to a method of screening for neoplastic cells using as a probe an antibody; and

Group IV: Claims 41, 43, and 44, drawn to a method of inhibiting the proliferation of cancer cells.

Group V: Claim42, drawn to a method of detecting cancer by detecting overexpression of a protein.

In response to this restriction requirement, ***Applicants provisionally elect Group I, claims 1-23, with traverse.***

In addition, Group I was subject to election of a single disclosed species. In accordance with the Examiner's request for an election of species, ***Applicants elect Species (i), claims 1, 18, and 19 for initial prosecution.*** Current PTO practice requires applicants to elect a single species where a plurality of distinct species is present regardless of whether a generic claim is present. If there is a generic claim, the Examiner is to include "a complete action on the merits of all the claims readable on the elected species" MPEP 809.02(c). To the extent all species fall within the limitations of a generic claim ultimately determined to be patentable the non-elected species should no longer be deemed to be withdrawn and claims to the additional non-elected species should be considered by the Examiner.

Applicants note that the above-elections are made with traverse and submit that the restriction is unnecessary. The Examiner is respectfully reminded that ***restriction is discretionary and not mandatory.*** "If the search and examination of an entire application can be made ***without serious burden***, the examiner ***must*** examine it on the merits, ***even though it includes claims to distinct or independent inventions***." M.P.E.P. 803.

In the instant case, the claims of Groups I, II, III, IV, and V is unnecessary. The claims of Group I are drawn to isolated nucleic acid molecules, which can be used as probes, while the claims of Group II are drawn to methods of screening for neoplastic cells generally using the probes recited in the claims of Group I. A search for prior art pertaining to the nucleic acid sequences is expected to identify any prior art, if such exists, pertaining to the uses of the nucleic acid sequences. Accordingly, a search for prior art relevant to Group I entails no greater burden than a search for prior art relevant to Group II and Groups I and II can be examined together without serious burden.

Similarly, the claims of Groups II and III are both drawn to methods of screening cells utilizing as target moieties the recited nucleic acid sequences or polypeptides expressed by the recited sequences (SEQ ID NO: 1-12). The claims of Group IV are drawn to methods involving inhibiting the gene product of a gene having one or more of the identified sequences, while the claims of Group V are directed to screening methods involving detecting these gene products. A search for prior art pertaining to the nucleic acid sequences is expected to identify any prior art, if such exists, pertaining to the polypeptides expressed by the nucleic acid sequences of Group I and to inhibition of the activity of the gene product of these sequences. Accordingly, a search for prior art relevant to Groups I and/or II entails no greater burden than a search for prior art relevant to Group III or Group IV and Groups II, III, IV, and V can be examined together without serious burden.

In view of the foregoing, Applicants respectfully request that the restriction between Groups I and II be withdrawn. Applicants further request that the restriction between Groups II, III, IV, and V be withdrawn.

If a telephone conference would expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (415) 576-0200.

Respectfully submitted,

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TAH
encl: Petition for 1 month extension of time.

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